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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 496

FREDERICK WILLARD THOMPSON,
Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

REPLY TO GOVERNMENT'S ANSWER TO PETITION FOR CERTIORARI.

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Petitioner files this reply brief to clarify two statements in the government's answering brief that may be misleading.

1. Petitioner argues that his post trial motions were served within the ten day period under F. R. C. P. 52(b) and 59(b) and (e) because notice of these motions was served on the 10th court day after counsel was notified that judgment had been entered by the trial court (P. Br. par. 2(a), pp. 2, 6-7). The government, however, considers only calendar days, computed from the date the judgment was entered, and states (G. Br. p. 11): "Petitioner served notice on the 12th day after the entry of judgment . . ." This statement ignores the fact that the trial court had taken the case on briefs, after hearing evidence, and that

neither counsel was present in court when judgment was entered on Tuesday, April 18, 1962. Counsel for both parties therefore first received notice that judgment had been entered the following day by mail. The government's statement also ignores the fact that the 10th day after counsel received notification of the judgment was Sunday, April 29th, and not a court day. Notice of the post trial motions was served on Monday, April 30th, within 10 court days of notice of entry of judgment.

Petitioner contends that the time period under these Rules should be uniformly interpreted so that the 10 day period for serving post trial motions begins to run from the date of receipt of notice of the entry of a judgment. This is consistent with Rule 24.1 of this Court: "Counsel for the respondent shall have thirty days . . . after receipt of a petition, within which to file . . ." Notice of motion served within this period should therefore toll the time for filing notice of appeal under F. R. C. P. 73(a).

2. Further, in this case the trial court declared that the post trial motions were timely, and the government did not object. The government, however, states (G. Br. p. 10): "Neither the action of the court with respect to the motion, nor the failure of the government to object to its timeliness, is of legal significance." Yet in *Harris Truck Lines* v. *Cherry Meat Packers, Inc.*, 1962, 371 U. S. 215, this Court, in a per curiam opinion, reversed where an appeal had been dismissed because the trial court had extended the time for notice of appeal, contrary to the Rules, and where counsel had relied on the court's action. In that case the request for the extension was made within the time for notice of appeal, and if the request to extend the time had not been granted, counsel could still have filed. In the present case, if the trial court had not declared the post trial motions timely, petitioner could then have filed notice of appeal from the judgment.

Petitioner therefore asks this Court to grant review, on the other grounds stated in the petition, or as stated here, to hold that the post trial motions were timely, either because of the trial court's action, or because notice was served within ten days after counsel was notified that judgment had been entered, and petitioner asks this Court to reverse and remand this case for a hearing on the merits of petitioner's qualification to become a citizen of the United States.

Respectfully submitted,

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